

Horace F. Hatch, an Individual, d/b/a East Texas Fire Protection Company and Road Sprinkler Fitters Local Union No. 669. Case 16-CA-10095

October 20, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND ZIMMERMAN

On August 13, 1982, Administrative Law Judge Wallace H. Nations issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

We agree with the Administrative Law Judge's finding that Respondent violated Section 8(a)(5) and (1) by its failure to provide certain requested information, as reflected in his Conclusion of Law 3. However, we do not agree with his failure to order Respondent to post an appropriate notice to employees. We find it necessary and appropriate that, in order to remedy fully the violation herein, Respondent be ordered to post an appropriate notice.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified and set forth in full below, and hereby orders that the Respondent, Horace F. Hatch, an Individual, d/b/a East Texas Fire Protection Company, Longview, Texas, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to make available for inspection by representatives of Road Sprinkler Fitters Local Union No. 669 the purchase orders and/or invoices for the last 3 years and the register summarizing these documents.

(b) In any like or related manner interfering with, restraining, or coercing employees in the ex-

ercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request of the above-named labor organization, produce and make available for inspection by its representatives the purchase orders and/or invoices for the last 3 years and the register summarizing these documents.

(b) Post at its place of business in Longview, Texas, copies of the attached notice marked "Appendix."² Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by its representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

² In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to make available for inspection by representatives of Road Sprinkler Fitters Local Union No. 669 the purchase orders and/or invoices for the last 3 years and the register summarizing these documents.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the National Labor Relations Act.

WE WILL, upon request of the above-named labor organization, produce and make available for inspection by its representatives the purchase orders and/or invoices for the last 3 years and the register summarizing these documents.

HORACE F. HATCH, AN INDIVIDUAL,
D/B/A EAST TEXAS FIRE PROTECTION COMPANY

¹ The General Counsel has excepted to the failure of the Administrative Law Judge to find that the failure to produce documentation constitutes a violation Sec. 8(a)(5) of the Act. Respondent filed no exceptions.

DECISION

STATEMENT OF THE CASE

WALLACE H. NATIONS, Administrative Law Judge: Road Sprinkler Fitters Local Union No. 669 (the Union), filed a charge against Horace F. Hatch d/b/a East Texas Fire Protection Company (Respondent), on September 28, 1981. A complaint issued on January 26, 1982, alleging that refusal of Respondent to furnish certain information requested by the Union violated Section 8(a)(1) and (5) of the Act. The hearing was held before me on these matters at Marshall, Texas, on February 11, 1982.

Upon the entire record in this case and from my observations of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent engages in the service, installation, and distribution of automatic fire protection systems and related products and during the past 12-month period has purchased and received goods valued in excess of \$50,000 directly from points outside the State of Texas. I find that Respondent is an employer within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction in this case.

II. THE LABOR ORGANIZATION

Road Sprinkler Fitters Local Union No. 669 (the Union) is a labor organization within the meaning of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICE

The facts necessary to a decision in this case are undisputed. There is pending between Respondent and the Union an arbitration proceeding over a dispute as to whether Respondent complied with the collective-bargaining agreement in the payment of wages for certain work performed in the past. In order to prepare for its presentation of this case to the arbitrator, the Union has requested a number of documents which it believes will show that certain members of the involved local were underpaid for work performed for Respondent. The merits of the dispute before the arbitrator are not before the Board.

At the hearing, Respondent voluntarily produced to the satisfaction of the Union and the General Counsel all documentation sought except Respondent's purchase orders and/or invoices for the last 3 years and a register, which Respondent keeps, summarizing these documents.

With respect to these documents, the Union contends that by a study of the documents it can determine the location, size, and cost of the jobs, and through a study of these factors perhaps determine whether there is a basis for the allegations before the arbitrator. Respondent objects to the production of these documents because they would describe virtually every detail of the Company's business. It was not articulated by Respondent in what manner making this information known would in any way harm its business.

I believe that the law requires that the documentation sought be produced. See *Designcraft Jewel Industries, Inc.*, 254 NLRB 791 (1981); *Grand Islander Health Care Center, Inc.*, 256 NLRB 1255 (1981). The failure to produce such documentation constitutes a violation of Section 8(a)(1) of the Act. Both the Union and the General Counsel agree that they are willing to agree with Respondent for reasonable limitations on the publicity and distribution given the documents when produced. To the extent consistent with the use of the documents by the Union to complete its investigation, I direct that such limitations be afforded Respondent for the protection of his business.

IV. THE REMEDY

Having found that Respondent has violated Section 8(a)(1) and (5) of the Act by failure to produce for study by the Union its purchase orders and/or invoices for the last 3 years and a register kept by Respondent summarizing these documents, I shall recommend that Respondent be ordered to produce said documents and make them available for inspection by the Union's representatives, subject to any reasonable limitations on their reproduction and distribution found necessary by counsel for the General Counsel to ensure the integrity of the business of Respondent.

CONCLUSIONS OF LAW

1. Horace F. Hatch, an Individual d/b/a East Texas Fire Protection Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Road Sprinkler Fitters Local Union No. 669 is a labor organization within the meaning of Section 2(5) of the Act.

3. By refusal to make available for inspection by the Union Respondent's purchase orders and/or invoices for the last 3 years and the register kept by Respondent summarizing these documents Respondent is engaging in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act.

[Recommended Order omitted from publication.]